

\$500 nor more than \$5,000 for each violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation. No penalty shall be assessed nor cease and desist order issued unless the person is given notice and opportunity for a hearing before the Secretary with respect to the violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person affected by the order files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record on which the violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2), of not more than \$500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 99-198, title XVI, § 1651, Dec. 23, 1985, 99 Stat. 1627.)

§ 4911. Investigation and power to subpoena

(a) The Secretary may make such investigations as the Secretary deems necessary to carry out effectively the Secretary's responsibilities under this chapter or to determine whether a person has engaged or is engaging in any acts or practices that constitute a violation of any provision of this chapter, or of any plan or regulation issued under this chapter. For the purpose of an investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry.

The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a handler (or an importer who is subject to the plan), the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring the person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by the court as contempt thereof. All process in any such case may be served in the judicial district in which the person is an inhabitant or wherever the person may be found. The site of any hearing held under this subsection shall be within the judicial district in which the person is an inhabitant or in which the person's principal place of business is located.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based on, or growing out of, any alleged violation of this chapter, or of any plan or regulation issued thereunder, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Pub. L. 99-198, title XVI, § 1652, Dec. 23, 1985, 99 Stat. 1628; Pub. L. 103-189, § 8(h), Dec. 14, 1993, 107 Stat. 2262.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-189, in first sentence, substituted "a person" for "a handler or any other person", in fourth sentence, inserted "(or an importer who is subject to the plan)" after "a handler", and in last sentence, substituted "the person" for "the handler or other person".

§ 4912. Requirement of referendum

(a) The Secretary shall conduct a referendum among producers, handlers, and importers not exempt under sections 4902(5) and 4907(b) of this title who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons, for the purpose of ascertaining whether the issuance of a plan is approved or favored by producers, handlers, and importers. The ballots and other information or reports that reveal or tend to reveal the vote of any producer, handler,